

D.A.V. College Trust And Management Society And Ors. vs Director Of Public Instruction And Ors. on 25 February, 2008

Punjab-Haryana High Court

D.A.V. College Trust And Management Society And Ors. vs Director Of Public Instruction And Ors. on 25/2/2008

JUDGMENT

M.M. Kumar, J.

1. The short issue raised in this petition is as to whether the D.A.V. College, Sector 10, Chandigarh could be regarded as 'public authority' within the meaning of Section 2(h)(d) of the Right to Information Act, 2005 (for brevity 'the Act').

2. There are colleges with the name of D.A.V. College, Sector 10, Chandigarh, M.C.M.D.A.V. College, Sector 36, Chandigarh and a school with the name of D.A.V. Senior Secondary School, Sector 8, Chandigarh. These institutions are established by the society and are admittedly getting financial aid to the extent of 95% from the Union Territory, Chandigarh. It is claimed that grant-in-aid was initially to the extent of 95% which has come down to 45%. The grievance aired by the petitioner is that the Director of Public Instructions, U.T. Chandigarh has initiated proceedings against the petitioners under the Act whereas the petitioners do not fall within the expression 'public authority' as used in Section 2(h)(d) of the Act. It is claimed that the petitioners cannot be considered to have been receiving substantial financial aid from the government or government resources. In respect of petitioner No. 4 i.e. D.A.V. Senior Secondary School, Sector 8, Chandigarh respondent No. 2 vide order dated 10-10-2001/3-12-2007 (Annexure P/1) has already expressed its opinion that it is a 'public authority' within the meaning of Section 2(h)(d) of the Act. Members of the public had sought information from the petitioners by moving applications to the Public Information Officer. On 25-9-2007 (Annexure P.2), one Arun Aggarwal, respondent No. 5 has sought information regarding annual fee structure for various Classes/Programmes/Diplomas/Certificate courses/Add-on courses offered by the D.A.V. College, Sector 10, Chandigarh

along with many other informations Likewise, on 26-9-2007 (Annexure P.3), one Shri Avanindra Chopra, respondent No. 6, has requested for supply of information concerning advertisement / notices issued by the D. A. V. College, Sector 10, Chandigarh in respect of college admissions for the session 2007-08. One Sat Pal Kharwal, respondent No. 7 on 26-2-2007 (Annexure P.4) had also requested for supply of some information. However, the petitioners, in their reply sent to respondent No. 5 has taken the stand that the Act does not apply to their institution as it is not a 'public authority'. Respondent No. 1 on 10-9-2007 advised the petitioner to comply with the provisions of the Act as the petitioner is getting 95% grant-in-aid from the Chandigarh Administration. The view of respondent No. 1 is expressed in the following terms:

In view of the above provisions, it is clear that the DAV College, Chandigarh being an Aided College getting 95% grant-in-aid from the Chandigarh Administration is controlled and substantially financed by the Government and as such the college authorities are bound to comply with the provisions of the Act.

We operate in an era of transparency and accountability and it is expected that all our decision must stand the test of public scrutiny. Issues relating to annual fee structure for various courses, leave encashment, contributory provided fund deductions etc. are not covered by the provisions of Section 8 of the Act which provides exemption from disclosure of information.

Even otherwise, the annual fee structure, being an integral part of the Prospectus, is open to all and it would be improper to withhold information on the same.

3. Similar directions have been issued by the Central Public Information Officer, office of respondent No. 1 to the petitioners for furnishing information to respondent Nos. 5, 6 and 7 (Annexures P. 8 to P. 10).

4. We have heard the learned Counsel at a considerable length and find that the petitioners are covered by the expression 'public authority' as used by Section 2(h)(d) of the Act. The afore-mentioned provision is reproduced hereunder for facility of reference:

2. Definitions. In this Act, unless, the context otherwise requires,-

xx xx xx

(h) "public authority" means any authority or body or institutions of self-government established or constituted.-

(a) to (c) xx xx xx

(d) by notification issued or order made by the appropriate Government, and includes any-

(i) body owned, controlled or substantially financed;

(ii) non-Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.

5. A perusal of the definition of 'public authority' shows that 'public authority' would mean any authority or body or institution established or constituted apart from other things by the notification issued by an order made by the appropriate Government. It is to include even any body owned, controlled or substantially financed or non Government Organisation substantially financed directly or indirectly by the funds provided by the appropriate Government. It is undisputed that the petitioners are receiving substantially grant-in-aid from the Chandigarh Administration. Once a body is substantially financed by the Government, the functions of such body partake the character of public authority'. The definition of expression 'public authority' itself shows that 'public authority' would include any organization body owned, controlled or substantially financed directly or indirectly by funds provided by the Government or even the non-government organisation which is substantially financed. The petitioner has claimed that they are getting only 45% grant-in-aid after admitting that initially the grant-in-aid paid to them was to the extent of 95%. If on account of policy of the Government the grant-in-aid to the extent of 95% which was given initially allowing the petitioner to build up its own infrastructure and reducing the grant-in-aid later would not result into an argument that no substantial grant-in-aid is received and therefore it could not be regarded as 'public authority'. Therefore, we do not find any substance in the stance taken by the petitioner that it is not a 'public authority'.

6. There is another aspect of the matter. In another context, a Five-Judges Full Bench of this Court in the case of *Ravneet Kaur v. The Christian Medical College, Ludhiana* has considered the question as to whether the functions discharged by a private body

like Dayanand Medical College, Ludhiana or Christian Medical College, Ludhiana are public functions or private functions. The Full Bench has taken a view that since the institutions discharge public functions, it cannot be regarded as a private individual limiting the powers of the Court in issuance of directions including prerogative writs. It has further been held that imparting of education is a public function irrespective of any financial aid. Once the institutions like the petitioners are performing public functions affecting the life of a huge segment of the society and in addition are receiving substantial grant-in-aid then it cannot be argued that it is not a 'public authority'. Therefore, for the additional reason, detailed in Ravneet Kaur's case (supra), the writ petition would not survive and the question posed has to be answered against the petitioners.

No other argument has been advanced.

7. For the reasons aforementioned this petition fails and the same is dismissed.